IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 397/2005
(Shyam Lal & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 03/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. N.L.Joshi for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Shambhoo Singh for the non-petitioner No.2.

BY THE COURT:-

By the instant petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 22.3.2005 passed by Additional Sessions Judge, Churu (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioners against the order dated 20.10.2004 passed by Judicial Magistrate, Churu (for short 'the trial court' hereinafter) was dismissed.

I have heard learned counsel for the petitioners, public prosecutor and counsel appearing for the non-petitioner No.2. Carefully gone through the orders passed by the trial court and the revisional court.

It is contended by learned counsel for the petitioners that the police filed a negative final report, however, during investigation, the police came to the conclusion that the offence under Section 504 IPC is made out and the offence under Section 504 IPC being non-cognizable, therefore, the final report has been filed. On a protest petition filed by non-petitioner No.2, the trial court took the cognizance on the perusal of the police papers. According to learned counsel, there had not been any statement of witnesses under Section 200-202 Cr.P.C., and therefore, the cognizance taken on the police papers is bad in law. He has relied on a decision of this Court in Vinod Baid Vs. State of Rajasthan and Anr. 2003 (1) Cr.L.R.(Raj.) 70.

It is further contended by learned counsel for the petitioners that the occurrence took place on 23.10.2002 and the FIR was lodged on 26.10.2002 and therefore, the duration mentioned in the injury report of the two injured do not match with the timing of the occurrence. It is also contended that no specific abusive words have been stated and therefore, the offence under Section 504 IPC is also not made out and lastly it was contended that the petitioners are the family members and there cannot be any unlawful assembly of the family members.

Learned public prosecutor and the counsel appearing for the non-petitioner No.2 submit that the police filed final report on the ground that only the offence under Section 504 IPC

is made out which is non-cognizable.

The trial court on careful scrutiny of the statement of witnesses recorded by the investigating officer during investigation, prima-facie came to the conclusion that the offences for which the cognizance has been taken are made out against the present petitioners.

So far as the contention of the learned counsel for the petitioners regarding taking of the cognizance on the negative final report filed by the police, in my view, the judgment relied on by learned counsel for the petitioner is of no help to the petitioner for the reason that this controversy came to be concluded by a recent decision of Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, wherein the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is

sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

On careful perusal of the order of the trial court, it prima-facie appears that there is ground to proceed against the present petitioners for the offences mentioned therein. The petitioners have already availed one revision. The revisional court by an elaborate and well reasoned order came to the conclusion that the order taking cognizance passed by the trial court is in conformity with the provisions of law and the evidence available on record. In my view, both the courts below have rightly concurrently found that there is ground to proceed against the present petitioners and therefore, no case for interference in the inherent jurisdiction under Section 482 Cr.P.C. is made out.

The petition has no force and it is therefore, dismissed. Stay petition also stands dismissed.

(H.R.PANWAR),J.

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